IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 596 OF 2005

IN

SUIT NO. 3561 OF 2003

Bank of Baroda (Hong Kong) Ltd.,
(formerly known as
BOB International) & Anr. .. Plaintiffs.

vs.

Ganger Enterprise & Anr. .. Defendants.

Mr. Birendra Saraf with Raju Gawde i/by
K. Ashar & Co. for plaintiffs.
Mrs. S.R. Kumbhat i/by K.K. Tated
for Defendant no.1.

CORAM : S.U.KAMDAR, J.

DATE : 20th February, 2006.

P.C.

. The present summons for judgment is taken out in respect of a bill of exchange being a bill of exchange for US Dollars 69,993.84 with interest thereon of US Dollars 4,931.47 totalling to US $ 74,925.31 = Rs. 34,65,296. The suit is on the bill of exchange. The defendant no. 1 is the executor. Defendant no. 2 is the drawer. The learned counsel

for the plaintiff states that the present suit is directed against defendant no. 1 only and no relief is sought against defendant no. 2. Suit is restricted only against defendant no. 1. The learned counsel for the defendants has raised two defences. Firstly it is contended that this Court has no jurisdiction to entertain and try the present suit. In support of the aforesaid contention, the learned counsel for the defendants states that part of the cause of action i.e. acceptance of the bill of exchange is at Navi Mumbai and drawing of the bill of exchange is at Hong Kong and, therefore, this Court has no jurisdiction as no part of action has arisen within the city of Mumbai.

2. However, it has been brought to my attention that the defendant no. 1 carries on business in Mumbai at the address given in the cause title being 112, Keshavji Naik Road, Purshottam Building, 1st floor, Room No. 2, Chinch Bunder, Mumbai 400 009. The bill of exchange was also presented at the aforesaid address for the purpose of payment and the same was dishonoured at Mumbai. Thus, in my opinion, once the defendants are carrying on business in Mumbai then irrespective of the fact that any part of cause of action arose within Bombay or not, this Court will have jurisdiction to entertain and try the present suit. The cause of action for the purpose of jurisdiction of this Court

is not the sole criteria. The same is one of the alternates. If the defendants are residing carrying on business within the local limits of the jurisdiction of this Court. Thus irrespective of the fact that whether cause of action arose within the local limits of this Court or not still this Court will have jurisdiction to entertain and try the present suit. In the present case the defendants are carrying on business in Mumbai and thus the question of this Court having no jurisdiction to try the suit does not arise. In that light of the matter, the aforesaid submission is rejected.

3. The next contention advanced by the defendant no. 1 is that the goods supplied by the 2nd defendant were defective and, therefore, they have issued a debit note and has forwarded the same to the defendant no. 2 and, therefore, there is no liability. This argument is not available to the defendant no. 1 as against the plaintiffs who are the bankers and who have discounted the said bill of exchange.

4. The last contention is that there is a material alteration by reducing the number of days in the said bill of exchange from 110 to 70. However, the learned advocate has produced the true copy of the original bill of exchange which

indicates only 70 days and there is no alteration therein. The said bill of exchange is duly signed by defendant no. 1. In that light of the matter, there is no substance in the present defence raised by the defendant no. 1. However, with a view to give an opportunity to the defendant no. 1 to defend the suit, I direct the defendant no. 1 to deposit a sum of Rs. 30 lacs in this Court within a period of four weeks from today failing which the plaintiffs will be entitled to decree. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court. Summons for judgment disposed of accordingly.

5. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.